BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of

Streamlining the Commission's	)	
Rules and Regulations for Satellite	)	**IB Docket No. 95-117**
Application and Licensing Procedures	)	

PETITION FOR RECONSIDERATION OF EDS CORPORATION

EDS Corporation ("EDS"), by its attorneys and pursuant to Section 1.429 of the Commission's rules, hereby files this petition for reconsideration of the Report and Order, FCC 96-425, issued December 16, (1996), in the above-captioned proceeding.

EDS is one of the world's leading providers of information technology services. Through its subsidiaries, EDS holds numerous earth station authorizations in the domestic and international fixed-satellite services, including authorizations for fixed earth stations, temporary-fixed ("transportable") earth stations, and very small aperture terminal ("VSAT") networks. EDS operates all of its earth stations on a private, non-common carrier basis. EDS participated in this proceeding previously, filing initial comments on October 4, 1995.

EDS is seeking reconsideration of paragraph 43 of the Report and Order in which the Commission requires applicants for non-common carrier earth station licenses to certify the accuracy of the foreign ownership and control information requested in items 30 through 34 of new FCC Form 312 and to require non-common carrier licensees to file an updated version of Form 312 "whenever there are changes to a licensee's financial and legal qualifications." For non-common carriers, these requirements serve no statutory purpose, are unreasonably burdensome, are inconsistent with the Paperwork Reduction Act, and should be eliminated.

I. THE COMMISSION SHOULD MODIFY NEW FORM 312 TO DELETE THE REQUESTS FOR INFORMATION CONCERNING ALIEN OFFICERS AND DIRECTORS WHICH CONGRESS HAS DETERMINED IS NO LONGER RELEVANT

Items 32, 33, and 34 of new Form 312 request information on the identity of alien officers or directors of the earth station license applicant and/or the applicant's parent corporation(s). When the Commission initiated this proceeding in 1995, it presumably proposed collecting such information in order to ensure applicants' compliance with the then existing restrictions under Section 310(b) of the Communications Act of 1934, as amended, which placed limitations on alien officers and

directors participating in the management and control of certain types of FCC licensees.

In Section 403(k) of the Telecommunications Act of 1996, however, Congress amended Section 310(b) so that the existence of alien officers or directors no longer disqualifies domestic corporations from holding broadcast, common carrier, aeronautical fixed or aeronautical en route licenses.[1/] Now that Congress has determined that the existence of alien officers and directors is irrelevant for any FCC licensee, common carrier, broadcast or otherwise, the Commission should not require applicants to provide information on their alien officers and directors and should not require earth station licensees to update this information throughout the term of their licenses.[2/] Specifically, the Commission should modify Form 312 item numbers 32, 33 and 34 to delete all references to alien officers and directors.

1/ Pub. L. No. 104-104, 110 Stat. 56 (1996). Congress deleted the words "officer" and "director" completely from Section 310(b).

2/ The Commission should review all of its other application forms that predated the enactment of the Telecommunications Act of 1996, e.g., FCC Form 600, to eliminate references to alien officers and directors in those forms also.

II. THE REQUIREMENT THAT NON-COMMON CARRIERS REPORT AND UPDATE THEIR ALIEN OWNERSHIP SERVES NO STATUTORY PURPOSE, IS UNDULY BURDENSOME, IS INCONSISTENT WITH THE PAPERWORK REDUCTION ACT AND, THEREFORE, SHOULD BE ELIMINATED

Prior to 1974, Section 310 of the Act prohibited the Commission from issuing any radio station license directly to any alien, any foreign government (or its representative), any foreign corporation, any domestic corporation of which any officer or director was an alien or whose stock had more than 20 percent foreign ownership, or any domestic corporation whose parent had an alien officer, more than 25 percent alien directors, or more than 25 percent foreign ownership. In 1974, however, Congress amended Section 310.[3/] While retaining in new Section 310(a) the prohibition against issuance of any radio license to a foreign government or its representative, Congress narrowed the range of licenses to which other citizenship restrictions would apply to only four specified types of radio station licenses: broadcast, common carrier, aeronautical en route and aeronautical fixed.

Since the 1974 changes to Section 310, the Commission consistently has held that foreign ownership limitations do not

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[3/] Pub. L. No. 93-505, 88 Stat. 1576, approved November 30, 1974.

apply to licensees other than the four types specified above. See, e.g., Amendment of Parts 1, 5, 13, 81, 83, 87, 89, 91, 93 95 and 97 of the Commission's Rules, 56 F.C.C.2d 1 (1975); Cable Television Foreign Ownership; 77 F.C.C.2d 73, 82 (1980); Subscription Video, 2 FCC Rcd 1001, 1006 (1987); Orion Satellite Corporation, 5 FCC Rcd 4937, 4940 (1990). In particular, the Commission has held that the Section 310(b) foreign ownership restrictions do not apply to non-common carrier earth station licensees. Licensing Under Title III of the Communications Act of 1934, as amended, of Non-Common Carrier Transmit/Receive Earth Stations Operating with the INTELSAT Global Communications Satellite System, 8 FCC Rcd 1387 (1993); Reuters Information Services, Inc., 4 FCC Rcd 5982 (1989).

Because there is no statutory purpose for collecting alien ownership information from applicants for non-common carrier earth station licenses, the Commission should not impose an alien ownership reporting obligation. As the U.S. Court of Appeals for the District of Columbia Circuit has taught, a "regulation perfectly reasonable and appropriate in the face of a given problem may be highly capricious if that problem does not exist." Home Box Office, Inc. v. FCC, 567 F.2d 9, 36 (D.C. Cir.), cert. denied, 434 U.S. 829 (1977), quoting City of Chicago

v. Federal Power Commission, 458 F.2d 731, 742 (D.C. Cir. 1971), cert. denied, 405 U.S. 1074 (1972). This principle of law is reflected in the 1995 recodification of the Paperwork Reduction Act ("PRA"), which further strengthened the existing statute.[4/] The PRA specifically requires federal agencies to evaluate "whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility."[5/] The Commission has not explained why it is necessary, or even useful, to impose a foreign ownership certification requirement on non-common carrier earth station licensees. It is difficult to imagine how the Commission should justify such a requirement.

Previously, the Commission expressly held that applicants for non-common carrier licenses need not provide information relating to their foreign ownership and control which otherwise is requested in FCC application forms. Establishment of Satellite Systems Providing International Communications, 101 F.C.C.2d 1046, 1164(1985) ("Separate Systems Order") ("Since separate system operators will be non-common carriers, Section

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4/ Pub. L. No. 104-13, 109 Stat. 163, 44 U.S.C.A. §§3501-3520.

5/ 44 U.S.C.A. §3506(c)(2)(A)(i) (emphasis added). See also 44 U.S.C.A. §§3506(c)(3)(A) and 3508.

310(b) of the Communications Act will not apply. Therefore, separate system applicants need not respond to those questions in [the application form] requesting information required by Section 310(b)."). The Commission has not adequately explained why in paragraph 43 of the Report and Order it has changed its longstanding position and now will require applicants for non-common carrier earth station licenses to submit information regarding their foreign ownership and control. While the Commission under appropriate circumstances lawfully may change its policies, the Commission must supply a reasoned analysis indicating that its prior standards are being deliberately changed and not blithely cast aside. Telephone and Data Systems v. FCC, 19 F.3d 42, 49 (D.C. Cir. 1994); Greater Boston Television Corporation v. FCC, 444 F.2d 841, 852 (D.C. Cir. 1970), cert. denied, 403 U.S. 923 (1971). The Commission failed to do so in this case.

In imposing the foreign ownership reporting requirement upon all earth station license applicants, the Commission may not even be aware that most publicly traded corporations do not monitor the level of their foreign ownership. Form 312, however, requires applicants for non-common carrier earth station licenses

to certify whether their foreign ownership exceeds specified levels, subject to criminal penalties for willful false statements. See FCC Form 312, Main Form, p. 4. To make the required certification, therefore, publicly-traded corporations that are not subject to Section 310(b) foreign ownership restrictions must conduct a special survey of their foreign ownership when they apply for an earth station license. Moreover, it is not clear whether a licensee is obligated to conduct additional surveys in order to comply with the Commission's directive to update Form 312 "whenever there are changes to a licensee's financial and legal qualifications." Report and Order at para. 43.

In light of the fact that there is no statutory purpose under Section 310(b) for applicants for non-common carrier licenses to survey their foreign ownership, this requirement is very burdensome and inconsistent with the PRA's admonition to minimize federal information collection burdens.[6/] The cost to a publicly-traded corporation of monitoring its foreign ownership may dissuade it from applying for an earth station license, especially if such a license is not considered absolutely

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6/ 44 U.S.C.A. §3504(c)(3).

critical to the corporation's core activities.[7/] Moreover, the Commission has identified no benefit that will be gained by requiring applicants for non-common carrier earth station licenses to certify to their levels of foreign ownership at the time of the application and to continue monitoring those levels for the term of any license issued. The costs imposed on non-common carrier earth station licensees by the foreign ownership certification requirement, therefore, clearly outweigh any marginal benefits gained in collecting this information.

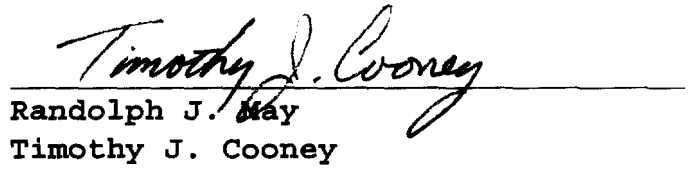
[7/] To the extent that the Commission deems it necessary to collect foreign ownership information from non-common carriers, the Commission at the least should distinguish between non-common carrier space station licensees, of which there are approximately a dozen, and non-common carrier earth station licensees, of which there are thousands. To apply for a satellite space station license is a major decision to be made by the highest levels of a corporation, and the cost of complying with foreign ownership monitoring requirements is relatively small compared to the millions or even billions of dollars needed to enter the satellite space station business. The cost of installing a typical non-common carrier licensed earth station, on the other hand, runs in the tens of thousands of dollars or even less, an amount which might be dwarfed by the cost of conducting a survey to certify the level of a large publicly-traded corporation's foreign ownership. At least in the case of non-common carrier earth station licensees, therefore, the cost-benefit analysis clearly weighs in favor of eliminating the requirement that an applicant certify to the levels of its foreign ownership and control.

III. CONCLUSION

For the foregoing reasons, the Commission should grant EDS Corporation's request for reconsideration of paragraph 43 of the December 16, 1996, Report and Order.

Respectfully submitted,

EDS Corporation



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March 12, 1997

CERTIFICATE OF SERVICE

I, Marcia Towne Devens, do hereby certify that true and correct copies of the foregoing document, "PETITION FOR RECONSIDERATION OF EDS CORPORATION," were served by hand or by first-class U.S. Mail, postage prepaid, this 12th day of March, 1997, on the following:

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